

**BEFORE THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

DISH Wireless L.L.C. d/b/a Gen Mobile)	
Petition for Designation as an)	D.T.C. 23-1
Eligible Telecommunications Carrier)	
in the Commonwealth of Massachusetts)	

MOTION FOR PROTECTIVE ORDER DISH WIRELESS L.L.C. D/B/A GEN MOBILE

DISH Wireless L.L.C. d/b/a Gen Mobile (“DISH Wireless” or the “Company”) respectfully requests that the Department of Telecommunications and Cable (“Department”) protect from public disclosure certain confidential, competitively sensitive, and proprietary information provided in this proceeding pursuant to Mass. Gen. Law ch. 4, § 7(26), Mass. Gen. Law ch. 25C § 5, and 220 CMR 1.04(5)(e). Specifically, DISH Wireless requests that confidentiality be afforded to certain information being submitted to the Department on April 13, 2023, as part of the Company’s Response to the First Set of Data Requests by the Department of Telecommunications and Cable (the “Response”).

The Department issued a First Set of Information Requests to DISH Wireless on March 23, 2023 (“Data Requests”). Data Request D.T.C. 1-1 asks the following: “State whether DISH presently has physical facilities in Massachusetts. If yes, please elaborate on the extent of facilities in Massachusetts.” Data Request D.T.C. 1-5 asks the following: “Provide the number of current DISH non-Lifeline mobile voice and broadband subscribers nationwide and in Massachusetts.” The Response is being submitted on April 13, 2023, in accordance with the instructions in the Data Request. Included in the Response to Data Requests D.T.C. 1-1 and 1-5 is highly sensitive commercial information, for which protection from public disclosure is herein requested. Specifically, DISH respectfully requests protection from disclosure for Schedule DISH 1-1 provided in the Response to Data Request D.T.C. 1-1 and a part of its Response to

Data Request D.T.C. 1-5. DISH Wireless is electronically submitting, concurrent with this motion, a public, redacted, version of the Response. An unredacted version of the Response is being submitted to the Presiding Hearing Officer contemporaneously with this Motion through a separate electronic submission to the Department.

I. LEGAL STANDARD

The Department has the authority to protect confidential information from public disclosure in accordance with Mass. Gen. Law ch. 25C § 5, which states in part that:

[T]he department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the department shall protect only so much of the information as is necessary to meet such need.

The Department has established a three-part test for determining whether information submitted by a party in a Department proceeding may be protected from public disclosure under Mass. Gen. Law ch. 25C § 5. First, the information for which protective treatment is sought must constitute “trade secrets, [or] confidential, completely sensitive or other proprietary information.” *Id.* Second, the party seeking protective treatment must overcome the presumption in Mass. Gen. Law ch. 66 § 10 that all such information is public information by “proving” the need for non-disclosure. Third, even where a party establishes the need for protective treatment, the Department may protect only so much of that information as is deemed necessary to meet the established need and may also limit the term or length of time such protection will be in effect.¹

¹ See *CoxCom, Inc. d/b/a Cox Communications*, D.T.C. 19-3, Hearing Officer Ruling on Motions for Protective Treatment at 2-3 (March 3, 2020).

II. ARGUMENT

DISH Wireless' request meets the Department's three-part test. First, the information for which protective treatment is sought is confidential, proprietary and competitively sensitive information. Data Request D.T.C. 1-1 seeks information about the extent of DISH Wireless' physical facilities in Massachusetts. DISH Wireless' response to Data Request D.T.C. 1-1 refers the Department to Schedule DISH 1-1, which is a list of zip codes within Massachusetts where DISH Wireless has completed construction of its 5G wireless facilities. DISH Wireless' network construction plans and the progress it has made on completing those plans are developed and maintained internally by the Company. The Company does not share its internal network plans and construction status with the public nor with any third parties, and as such, the information provided in the Response to Data Request D.T.C. 1-1 is not customarily available in the public domain.

Data Request D.T.C. 1-5 seeks information about the number of the non-Lifeline mobile and voice broadband subscribers nationwide and in Massachusetts. While the number of DISH Wireless' non-Lifeline subscribers is publicly available, how those subscribers are distributed across states is not. The Company does not share information about the number of non-Lifeline subscribers it has in any particular state with the public nor with any third parties, and as such the information provided in the Response to Data Request D.T.C. 1-5 is not customarily available in the public domain.

Second, the information described in this request for protective treatment has a demonstrably strong need for non-disclosure. The location of DISH Wireless' network facilities reflects the Company's internal decisions about where to locate its network and the timing for

building out its network. Information regarding the location of DISH Wireless' network also reveals the where the Company plans to target its marketing efforts. Information about the number of non-Lifeline subscribers in Massachusetts indicates how successful DISH Wireless has been in marketing its services in the Commonwealth. DISH Wireless' competitors could use the foregoing confidential commercial information to develop strategies regarding the construction and location of their own networks and marketing plans focused on Massachusetts consumers.

The wireless communications services market is highly competitive, with DISH Wireless being only one of several competitors in Massachusetts. The public release of the foregoing confidential information to the public and, more particularly, to competitors of the Company, would reveal competitively sensitive information to parties who are best positioned to take unwarranted advantage of the access. The result would be to cause DISH Wireless to suffer material damage to its competitive position and to engender results adverse to the public interest due to the anticompetitive effect such disclosure would have on DISH Wireless' current and future operations. In short, public disclosure of such confidential information would hamper DISH Wireless' ability to most successfully operate its business and to protect strategic business information. As such, disclosure would not serve the public interest, which benefits materially from access to DISH Wireless' consistently successful and competitive operations.

Third, if the Department is compelled to limit the period of confidential treatment, DISH Wireless requests that the established period of such treatment be no less than seven (7) years, with an opportunity to renew the request for confidential treatment upon a showing of a legitimate need for continuing protection. DISH Wireless submits that a minimum seven-year confidential period is necessary to ensure that its market research materials will not be disclosed

prematurely while they still could hold immense competitive value to DISH Wireless' competitors.

III. CONCLUSION

WHEREFORE, DISH Wireless respectfully requests that the Department grant this Motion for Protective Order with respect to the aforementioned confidential information for a period of at least seven years with opportunity for DISH Wireless to renew the request for confidential treatment upon a showing of a need for continuing protection. If any request from a third party is made for access to the confidential information described in this Motion, DISH Wireless requests notification to the undersigned counsel, affording opportunity for the Company to amend and/or clarify this request for confidential treatment and, insofar as necessary, oppose the request for disclosure before the Department acts to release the information.

Respectfully submitted,



Sola Lee
Senior Corporate Counsel
DISH Wireless L.L.C.
1110 Vermont Ave NW Ste. 450
Washington, DC 20005
(800) 378-7127 x707
Sola.Lee@dish.com

April 13, 2023

State of California

)

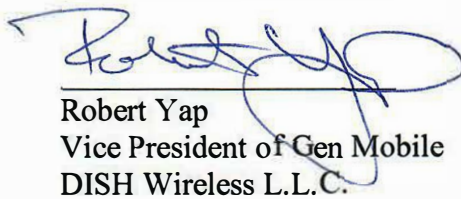
County of Los Angeles

)

)

Verification

I, Robert Yap, the Vice President of Gen Mobile for DISH Wireless L.L.C. ("DISH Wireless") hereby state upon oath and affirmation of belief and personal knowledge that the matters, facts and statements set forth in the foregoing Response to the First Set of Information Requests from the Department of Telecommunications and Cable by DISH Wireless L.L.C. d/b/a Gen Mobile, is true to the best of my knowledge and belief.




Robert Yap
Vice President of Gen Mobile
DISH Wireless L.L.C.

Dated: April 13, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all persons in the attached service list, compiled by the Secretary of the Department in this proceeding to include all parties of record, in accordance with the requirements of 207 C.M.R. 1.05(I) of the Department's Procedural Rules.



Jane Seo

April 13, 2023



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 23-1 Service List

DISH Wireless L.L.C. d/b/a Gen Mobile Petition for Designation as an Eligible Telecommunications Carrier.

Shonda D. Green, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500
Telephone: (617) 305-3580
Email: dte.efiling@mass.gov

William Bendetson
Presiding Officer
Legal Division
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500
Telephone: (617) 305-3580
Email: william.bendetson@mass.gov

Sarah K. Monahan
Acting General Counsel
Legal Division
1000 Washington Street, Suite 600
Boston, MA 02118-6500
Telephone: (617) 305-3580
Email: sarah.k.monahan@mass.gov

Esther Laine
Director, Competition Division
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500
Telephone: (617) 305-3580
Email: esther.laine1@mass.gov

Joseph Tiernan
Deputy Director, Competition Division
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500
Telephone: (617) 305-3580
Email: joseph.tiernan@mass.gov

Jacob Levine
Market Policy Economist, Competition Division
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500
Telephone: (617) 305-3580
Email: jacob.levine@mass.gov

Joslyn Day
Director, Consumer Division
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500
Telephone: (617) 305-3580
Email: joslyn.day@mass.gov

Corey Pilz
Deputy Director, Consumer Division
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500
Telephone: (617) 305-3580
Email: corey.r.pilz@mass.gov

Alison Minea
Vice President and Associate General Counsel
DISH Wireless L.L.C.
1110 Vermont Ave NW Ste. 450
Washington, DC 20005
Telephone: (202) 463-3709
Email: Alison.Minea@dish.com

Jonathan Dinerstein
Assistant Attorney General
Energy & Telecommunications Division, Energy & Environment Bureau
Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Telephone: (617) 963-2000
Email: Jonathan.Dinerstein@mass.gov

Adriana Bakhos
Litigation Support Specialist
Energy & Telecommunications Division, Energy & Environment Bureau
Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Telephone: (617) 963-2000
Email: adriana.c.bakhos@mass.gov